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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218438 **DATE:** April 24, 1985
MATTER OF: Joiner Van and Storage Service, Inc.

DIGEST:

1. The Small Business Administration has exclusive authority to decide matters of size status and, therefore, GAO will not consider protests alleging that a firm does not qualify as small.
2. GAO will not review the sufficiency of an offeror's Interstate Commerce Commission operating authority where the solicitation did not specifically require such authority.

Joiner Van and Storage Service, Inc. protests the award of a contract to Bekins Moving and Storage, Inc. of Orlando, Florida under solicitation No. N-68836-85-R-0002, issued as a 100 percent small business set-aside by the Naval Supply Center, Jacksonville, Florida. The contract covers packing, drayage, and associated services incident to the shipment of household goods. Joiner contends that Bekins does not either meet the applicable size standard or hold the necessary operating authority.

We dismiss the protest.

According to Joiner, Bekins is not a small business concern because it is a wholly owned subsidiary of The Bekins Company, a California corporation whose assets and sales far exceed the maximum allowed by the Small Business Administration (SBA). In this regard, under 15 U.S.C. § 637(b) (1982), the SBA has conclusive authority to determine size status for federal procurement purposes. Therefore, our Office generally does not consider protests on such matters. Alliance Properties, Inc. et al., B-214849, July 20, 1984, 84-2 CPD ¶ 69; Wilkinson Mfg. Co., B-206334, Feb. 24, 1982, 82-1 CPD ¶ 165.

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Joiner also asserts that Bekins does not have the Interstate Commerce Commission (ICC) operating authority needed to perform the work; that Bekins' advertising indicates that it relies upon the authority granted to an affiliate (rather than holding authority in its own name); and that Bekins failed to identify its operating authority in the appropriate space in its offer.

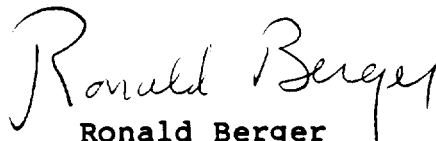
To the extent that these arguments are intended to show Bekins does not, itself, meet the applicable size standard, we will not consider them for the reason stated above. To the extent Joiner challenges the sufficiency of Bekins' operating authority, whether an offer satisfies a general requirement for operating rights involves the offeror's responsibility. Lewis & Michael, Inc., B-215134, May 23, 1984, 84-1 CPD ¶ 565; Allison-Hillard Van & Storage, B-201621, Feb. 9, 1981, 81-1 CPD ¶ 82. Before awarding the contract, the contracting officer necessarily determined that Bekins was responsible. See Federal Acquisition Regulation, 48 C.F.R. § 9.103 (1984). Our Office does not review protests concerning affirmative determinations of responsibility absent a showing of possible fraud on the part of the procuring officials or that the solicitation contained definitive responsibility criteria that were not applied. Northwest Recovery Systems, Inc., B-216648, Nov. 8, 1984, 84-2 CPD ¶ 514.

Here, there is no allegation that the responsibility determination was the result of fraud. Nor do the solicitation provisions relating to operating authority constitute definitive responsibility criteria that have not been applied; none of the solicitation documents submitted to our Office by the protester require offerors to have operating authority in their own names. Rather, the solicitation merely requires offerors to indicate whether or not they hold authorization from the ICC or other regulatory body and, if held, to provide the authorization number. Compare Chipman Van & Storage, Inc., B-188917, Oct. 18, 1977, 77-2 CPD ¶ 299 (when solicitation does not contain a definitive responsibility criterion requiring ICC operating authority and is silent concerning whether operating certificates are required for performance, GAO will not consider a protest alleging that the bidder lacks authority in its own name).

As to Joiner's concern that Bekins did not identify its operating authority in the appropriate space in its written offer, it should be noted that this procurement was negotiated. Consequently, because the contracting agency was not bound by the concept of responsiveness applicable to formal advertising, it was not required to reject Bekins' offer for the mere failure to furnish all requested information with its initial proposal. See Xtek, Inc., B-213166, Mar. 9, 1984, 84-1 CPD ¶ 264.

Finally, Joiner asserts that award to Bekins was improper because its contract price is higher than its original offer, arguing that the contracting officer should seek lower, not higher, prices. In this regard, the pertinent regulation states that price negotiation is intended to permit the contracting officer and the offeror to agree on a fair and reasonable price, which is not necessarily the lowest price possible. See 48 C.F.R. § 15.803(c) and (d). In any event, we will not consider this matter because our jurisdiction is limited to whether a contract award complies with statutory, regulatory and other legal requirements. Coast Canvas Products II Co., Inc., B-214272, July 23, 1984, 84-2 CPD ¶ 84. Joiner's arguments here do not involve such requirements.

Accordingly, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), we dismiss Joiner's protest for failure to state a valid basis for protest.


Ronald Berger
Deputy Associate
General Counsel